UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

IN RE:	)	
	)	
Edee Marie RosadoEdee Marie Rosado	)	Case # 6:16-bk-00687-RAC
Carlos Rosado, Sr.	)	Chapter 7
	)	
Debtor(s)	)	

CHAPTER 7 TRUSTEE'S MOTION TO (I) APPROVE A SHORT SALE OF REAL PROPERTY FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES, AND INTERESTS PURSUANT TO 11 U.S.C. § 363(b), (f), AND (m), (II) BID PROCEDURES, (III) SURCHARGE AGREEMENT BETWEEN SECURED LENDER AND THE ESTATE, (IV) SECURED LENDER'S RIGHT TO CREDIT BID, AND (V) OTHER RELIEF

Richard B. Webber II, Chapter 7 Trustee (the "Trustee") duly appointed Chapter 7 Trustee for the above referenced debtors (the "Debtors") pursuant to Sections 105 and 363 of the Bankruptcy Code hereby files this motion ("Motion") for entry of an order for authority to sell certain real property free and clear of all liens, encumbrances, and interests. In support thereof, the Trustee respectfully states as follows:

JURISDICTION

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(A), (M), (N), and (O).

2. Venue is proper before this Court pursuant to 28 U.S.C. §§1408 and 1409.

3. The basis for the relief requested are 11 U.S.C. §§ 363(b), (f), and (m), Federal Rules of Bankruptcy Procedure 2002 and 6004.

BACKGROUND

4. On February 3, 2016, the Debtors commenced this case by filing a voluntary petition for relief under Chapter 7 of the United States Bankruptcy Code (the "Petition Date").

5. Richard B. Webber II is the duly appointed and qualified Chapter 7 Trustee.

6. The Trustee held and concluded the 341 meeting of creditors on March 10, 2016.

7. The Debtor/Debtors scheduled a 100% ownership interest in the real property located at 3318 Whistling Trail, Saint Cloud, FL 34772 Parcel ID R272630-056400011520 (the "Property") and legally described as follows:

Lot 152 of MALLARD POND – PHASE TWO, according to the Plat thereof as recorded in Plat Book 19, Pages 67 through 72, of the Public Records of Osceola County, Florida.

8. The Debtors scheduled the Property as having a value of $190,28.00 subject to a mortgage in favor of Caliber Home Loans (the "Secured Creditor") in the amount owed on the Petition Date of approximately $203,634.00.

9. The Trustee, after reviewing certain materials, including (without limitation) the BK Score™[1], sales analysis report and opinion of value for the Property provided by BK Global ("BKRES") and Listing Agent, has determined it to be in the best interest of the Debtor's estate and all creditors to negotiate to obtain Secured Creditor's agreement and consent ("Consent") to:

a. sell the Property to whichever third party Trustee determines to have made the best qualified offer during a public sale approved by the Court;

b. buy the Property from the Debtor's estate if (and only if) no such offer is made;

c. release the Senior Mortgage and otherwise waive all of its claims against the estate with respect to the Property (including any deficiency claims resulting from the proposed sale); and

d. agree to a 11 U.S.C. § 506 surcharge to pay all of the expenses associated with the proposed sale, including the payment of a 6% real estate brokerage commission to BKRES and Listing Agent and reimbursement of their out-of-pocket expenses, and provide a carve out for the benefit of allowed unsecured creditors of the Debtor's estate.

10. Public records and the Secured Creditor's title report reflect that the Property is encumbered by the statutory liens securing ad valorem real property taxes due to Osceola County for tax year 2016 in the approximate amount of $1,265.23 plus interest which is accruing daily (collectively the "Real Property Taxes").

11. The Secured Creditor has represented and warranted that it possesses a valid, perfected, enforceable and unavoidable first mortgage lien on the Property by virtue of a promissory note and mortgage recorded in the

[1] The BK Score™ is a 100-point rating that is generated by a proprietary algorithm from 10 unique property attributes in order to consistently measure sales confidence and predict market value.

official Records of Osceola County, and that as of the Petition Date, the total amount due to the Secured creditor is $219,845.64, consisting of principal and Interest (the "Secured Creditor Indebtedness").

RELIEF REQUESTED

12. The Trustee requests the entry of an order pursuant to Section 363 of the Bankruptcy Code approving the sale of the Property, using the services of BKRES and Listing Agent, free and clear of all liens, claims, encumbrances, and interests. As a material inducement to the Trustee's decision to pursue the proposed sale, the Secured Creditor consents to the Property's sale and the creation of a carve-out fund (the "Carve-Out Fund") that will provide for the costs of this case to be paid and provide a recovery for other creditors. The Trustee requests that any creditor (other than the Secured Creditor) asserting an interest or secured claim against the Property be required to assert no later than 5 days prior to the hearing on the instant Motion, and substantiate the basis for such asserted interest or secured claim, or the Court will authorize the sale of the Property free and clear of any such asserted interest or security interest, with such claims, at best, being treated as a general unsecured claim.

BASIS FOR RELIEF

A. The Sale of the Property Should Be Approved

13. The Trustee seeks the Court's authority to sell the Property free and clear of all liens, claims, encumbrances, and interests, but otherwise "As-Is, Where-Is" and without representations or warranties of any type, express or implied, being given by the Trustee and his professionals, pursuant to the Sale procedures described below.

14. Pursuant to Section 363(b) of the Bankruptcy Code, a Trustee, after notice and hearing, may use, sell, or lease property of the Debtor's estate other than in the ordinary course of business. The Court should approve the sale if the Trustee can demonstrate a sound business justification for the sale and if the sale process is fair, open, and reasonable. *See Official Comm. Of Unsecured Creditors of LTV Aerospace & Defense Co. v. LTV Corp. (In re Chateaugay Corp.),* 973 F.2d 141, 143 (2d Cir. 1992); *see also In re Sarah's Tent, LLC,* 396 B.R. 571, 573 (Bankr. S.D. Fla. 2008). Further, Bankruptcy Rule 6004(f) contemplates sales outside of the ordinary course of business.

15. The Trustee, through the services of BKRES and Listing Agent, have listed the property and accepted an offer that has been approved by the Secured Creditor and will result in a carve-out for the Bankruptcy Estate of $7,500.00. Attached as Exhibit "A" is the letter of consent/approval from the Secured Creditor.

16. Accordingly, the Trustee submits that the sale of the Property pursuant to the above process is reasonable under Section 363(b) of the Bankruptcy Code.

B. The Sale of the Property Should Be Approved Free and Clear of All Interests

17. Pursuant to Section 363(f) of the Bankruptcy Code, the Trustee may sell property free and clear of any interest in such property in an entity other than the estate if (1) permitted under applicable non-bankruptcy law; (2) the party asserting such interest consents; (3) the interest is a lien and the purchase price at which the property is to be sold is greater than the aggregate value of all liens on the property; (4) the interest is the subject of a bona fide dispute; or (5) the party asserting the interest could be compelled, in a legal or equitable proceeding, to accept a money satisfaction for such interest. *See In re Smart World Techs.*, LLC, 423 F.3d 166, 169 n.3 (2d Cir. 2005) ("Section 363 permits sales of assets free and clear of claims and interests . . . It thus allows purchasers . . . to acquire assets [from a debtor] without any accompanying liabilities."); *see also In re MMH Auto. Group, LLC*, 385 B.R. 347, 367 (Bankr. S.D. Fla. 2008).

18. The Trustee states that he shall satisfy Section 363(f)(2) of the Bankruptcy Code because the Secured Creditor consents to a sale of the property under Section 363(f)(2) of the Bankruptcy Code, free and clear of all liens, claims, encumbrances, and interests.

19. The Trustee requests that any creditor (other than the Secured Creditor) asserting an interest or secured claim against the Property, after proper notice is given, be required to timely assert and substantiate the basis for such asserted interest or secured claim, by filing and serving responsive papers no later than 5 days prior to the hearing on the instant Motion, or the Court will authorize the sale of the Property free and clear of any such asserted interest or security interest, with such claims, at best, being treated as a general unsecured claim.[2] Failure to object after proper notice and opportunity to object is deemed consent. *See BAC Home*

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[2] The Trustee reserves the right to dispute the alleged amount of any such claim both to validity and amount.

Loans Servicing LP v. Grassi, 2011 WL 6096509 (1st Cir. BAP Nov. 21, 2011); *Citicorp Homeowners Servs., Inc. v.* Elliott, 94 B.R. 343 (E.D. Pa. 1988); *In re* Gabel, 61 B.R. 661 (Bankr. W.D. La. 1985); *Futuresourse LLC v. Reuters Ltd.*, 312 F.3d 281 (7th Cir.); *In re Harbour E. Dev., Ltd.*, 2012WL1851015, at *12 (Bankr. S.D. Fla., May 21, 2012).

20. Accordingly, under Section 363(f)(2) of the Bankruptcy Code, the Trustee seeks authority to sell the Property free and clear of all liens, claims, encumbrances, and interests but otherwise "As-Is, Where-Is" and without representations or warranties of any type given by the Trustee or his professionals. Notwithstanding that the Trustee will seek authority to execute all documents and instruments he deems reasonable, necessary and/or desirable to close the sale, the only documents that the Trustee shall be required to deliver to close shall be (a) a Trustee's Deed, and (b) a copy of the Final Sale Order.

21. The Secured Creditor agrees to pay at closing (1) all outstanding real estate taxes, including any prorated amounts due for the current tax year; (2) if applicable, the lesser of any HOA fees accrued post-petition or the equivalent to twelve months' assessments and (3) all closing costs excluding professional fees but including State Documentary Stamps for the entire closing price pursuant to Florida Statue Sections 201.01 and 201.02; (4) the carve out to the Trustee. Any payments by the Secured Creditor as stated herein shall be subject to any and all limitations on the Secured Creditor's liability for any fees and costs under applicable law.

C. The Sale Will Be Undertaken by the Buyer in Good Faith

22. Section 363(m) of the Bankruptcy Code protects a good faith purchaser's interest in property purchased from a debtor notwithstanding that the sale conducted under section 363(b) was later reversed or modified on appeal.

23. The sale should be found to have been in good faith if the Trustee can demonstrate the transaction occurred at arm's-length and without fraud or collusion. *See Kabro Assocs. of West Islip, LLC v. Colony Hill Assocs. (In re Colony Hill Assocs.)*, 111 F.3d 269, 276 (2d Cir. 1997) ("Typically, the misconduct that would destroy a purchaser's good faith status at a judicial sale involves fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders." (citation omitted)); see *also In re Lorraine Brooke Associates, Inc.*, No. 07-12641 2007 WL 2257608 (Bankr.

S.D. Fla. Aug. 2, 2007) (holding that a sale was entitled to the protections of Section 363(m) of the Bankruptcy Code when it was based upon arm's length bargaining and without collusion).

24. The Trustee asserts that the sale of the Property will utilize a competitive and transparent marketplace that facilitates an arm's-length sale without fraud or collusion. Accordingly, the Trustee respectfully requests that the Court find that the purchaser(s) will be entitled to the protections of Section 363(m) of the Bankruptcy Code.

25. The Trustee further states that:

(a) the Trustee has reviewed the tax implications of the proposed Sale and has determined that the proposed sale will not result in a capital gains tax event to the estate or other taxable event which would negate the benefit realized from the Carve Out;

(b) the Trustee has determined, based upon a review of the schedules and information derived from the 341 meeting, that there will likely be a meaningful distribution to creditors based upon the understanding that the final sale price and the total dollar amount of claims to be filed in this case are both unknown and can only be estimated at this time; and

(c) Given the information available at this time, the Trustee has made an educated evaluation and determined that the proposed Sale is in the best interest of the estate and its creditors.

26. The Trustee respectfully requests that this Court: (a) waive the 14 day stay pursuant to Rule 6004(h), deem the sale order enforceable immediately upon entry, and authorize the Trustee to close on the sale immediately upon entry of the Final Sale Order; (b) authorize the Trustee to take all actions and execute all documents he deems reasonable, necessary and/or desirable to effectuate the requested relief; (c) retain sole and exclusive personal subject matter jurisdiction to implement, interpret and enforce the terms of the this Motion and the Final Sale Order; and (d) adjudicate all claims, controversies and/or disputes arising from or related to the proposed sale.

CONCLUSION

WHEREFORE, the Trustee respectfully requests that the Court enters an Order approving the short sale of the Property pursuant to Sections 105 and 363 of the Bankruptcy Code and for such other and further relief as this Court deems just and equitable under the circumstances of the case.

Under penalty of perjury, I have read the foregoing Motion and it is true and correct to the best of my knowledge information and belief. I HEREBY CERTIFY that a true and correct copy of the foregoing Motion has been furnished via first-class United States Mail, postage prepaid, or via electronic file transfer this November 9, 2016 to: Edee Marie Rosado, Carlos Rosado, Sr., 3318 WHISTLING TRAIL, SAINT CLOUD, FL 34772; KELVIN SOTO, SOTO MACK, LLC, 24 N CLYDE AVE, KISSIMMEE, FL 34741; creditors listed on the attached matrix; and the United States Trustee, 400 W. Washington St., Suite 1100, Orlando, FL 32801.

/s/ Richard B. Webber II
Richard B. Webber II, Trustee
PO Box 3000
Orlando, FL 32802-3000
Phone: (407)425-7010
E-mail: rwebber@zkslawfirm.com

EXHIBIT
"A"

CALIBER
HOME LOANS

13801 Wireless Way.
PO Box 24610
Oklahoma City, OK 73134
Tel: 866-650-0968
Fax: 405-553-4705

SHORT SALE ACCEPTANCE

11/7/2016

CARLOS ROSADO
EDEE ROSADO
3318 WHISTLING TRL

SAINT CLOUD FL 34772

Re: Short Sale of Property CARLOS ROSADO ; EDEE ROSADO
Loan Number: 9804171438
Property Address: 3318 WHISTLING TRL

SAINT CLOUD FL 34772

This letter serves to confirm that Caliber Home Loans , ("Caliber") has approved a short sale for the mortgaged property located at the above address, subject to the following conditions:

1. The closing and funding is to be no later than 12/15/2016.
2. The contract sales price and closing costs have been negotiated and are authorized as follows:

   a. The contract sales price shall not be less than **$205,000.00**. The property is to be sold in "AS IS" condition.

   b. The total real estate agent's commissions to be withheld from the net proceeds check shall not be greater than **$12,300.00**. or **6.00%** of the contract sales price.

   c. The borrower's settlement charges to be withheld from the net proceeds check shall not be greater than **$17,455.36**. The borrower's settlement charges include **$660.00** for HOA, **$0.00** for buyer credit, **$0.00** for borrower credit , and **$14,166.78** for Other Costs & 2nd Lien. If applicable, the maximum allowed to the junior lien holder to release their lien is **$5,000.00**.

   d. If Caliber services the junior lien, the loan number is N/A and is included in this acceptance.

   e. A borrower contribution in the amount of **$0.00** is needed to close this short sale.

   f. If this loan has PMI, final closing cannot take place until a PMI disposition is received by the closing agent/attorney. A separate document will be emailed to the closing agent/attorney prior to close of escrow. Please note that the PMI disposition could alter the terms of this acceptance letter. This loan has PMI: No.

3. The net proceeds check to Caliber at closing shall not be less than **$175,244.64**. Any additional fees/costs associated with the sale must be negotiated among and paid for by the

borrower, buyer, and /or real estate agent(s).

4. The actual payoff due through the anticipated close of escrow date is estimated at **$219,845.64**. The payoff includes unpaid principal balance, accrued interest, late charges, negative escrow reserve, and delinquency expenses. If there is a positive escrow balance at time of closing, the closing agent will forward the surplus funds to Caliber . Caliber will retain the funds and credit them to the deficiency balance. If there is a positive escrow reserve balance or outstanding hazard insurance claim, Caliber will retain this balance and credit it to the deficiency balance.

5. All hazard insurance policies must be cancelled and proof of cancellation provided at closing of the short sale. All hazard insurance policy refunds must be sent to Caliber at the address below.

6. The borrower or buyer shall not receive any cash from this short sale, and the Settlement/Closing Disclosure Statement shall provide that no cash is to be paid to the borrower or buyer from the closing or outside of closing as result of the sale of the property, unless approved in the settlement charges.

7. The borrower authorizes Caliber to disclose the terms and conditions of this letter to any buyer, real estate agent, attorney, settlement agent, or other party to the sale of the property as Caliber may deem reasonable and necessary to the sale of the property.

8. At least two business days before the scheduled closing, the closing agent/attorney is to forward the final Settlement / Closing Disclosure Statement to Caliber for approval.

9. Within one business day after closing, the closing agent/attorney is to forward to Caliber :

a. A copy of the fully executed sales contract with all addenda.

b. A copy of the fully executed Settlement / Closing Disclosure Statement.

c. Proceeds, as described in condition 3, shall be made payable to Caliber Home Loans, Inc. However, the closing agent is encouraged to wire the funds to Caliber .

d. If applicable, the Borrower's fully-executed promissory note in the amount of **$0.00.** If there is not a dollar amount listed in this section, Caliber Home Loans, Inc. is not requiring a promissory note.

The above items should be sent overnight to:

Caliber Home Loans
Home Lending / Short Sale Department
13801 Wireless Way
Oklahoma City, OK 73134
Tel: 866-650-0968
CALIBERCARES@CALIBERHOMELOANS.COM
Attn: Kay Brown

10. Caliber will release its lien(s) upon the property once all conditions of this letter are satisfied. Caliber or assigns will not pursue a deficiency judgment on the deficient balance.

11. The sale of the property must be an "arms-length transaction" between parties who are unrelated and unaffiliated by family, marriage, or commercial enterprise. There are no agreements or understandings between the borrower and the buyer that the borrower will remain in the property as a tenant or will obtain title or ownership of the property within 10 years of closing. There are no current agreements or offers relating to the sale or subsequent sale of the property that have not been disclosed to Caliber. Caliber requires full disclosure, including all details of this transaction. If Caliber finds full disclosurewas not made, this acceptance will

become null and void.

12. There may be tax consequences as a result of a short sale or negotiated payoff. You are encouraged to contact a tax professional to identify any tax liabilities you may have.

13. If a bankruptcy is filed by the borrowers(s), the terms and conditions of this acceptance will become null and void.

14. If the title to this property is transferred, in whole or part, prior to the close of escrow, Caliber Home Loans may rescind this acceptance without further notice.

Notice to Consumers presently in Bankruptcy or who have a Bankruptcy Discharge: If you are a debtor presently subject to a proceeding in a Bankruptcy Court, or if you have previously been discharged from this debt by a Federal Bankruptcy court, this communication is not an attempt to collect a debt but is sent for informational purposes only or to satisfy certain Federal or State legal obligations.

Pursuant to section 169 of the Housing and Community Development Act of 1987, you may have the opportunity to receive counseling from various local agencies regarding the retention of your home. You may obtain a list of the HUD-approved housing counseling agencies by calling the HUD nationwide toll free telephone number at (800) 569-4287 or by visiting www.hud.gov/offices.

THIS IS AN ATTEMPT BY A DEBT COLLECTOR TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

Caliber

Kay Brown
Signature: ______________________________ 11/07/16

Seller Signature and Date ______________________________ 11/8/16

Seller Signature and Date ______________________________

Label Matrix for local noticing
113A-6
Case 6:16-bk-00687-RAC
Middle District of Florida
Orlando
Wed Nov 9 11:15:22 EST 2016

AMERICAN EXPRESS BANK FSB
C/O BECKET AND LEE LLP
PO BOX 3001
MALVERN PA 19355-0701

Capital One Bank (USA), N.A.
PO Box 71083
Charlotte, NC 28272-1083

Department Store National Bank
c/o Quantum3 Group LLC
PO Box 657
Kirkland, WA 98083-0657

INTERNAL REVENUE SERVICE
Kansas City, MO 64999-0202

Midland Funding LLC
PO Box 2011
Warren MI 48090-2011

Osceola Regional Medical Center
Resurgent Capital Services
PO Box 1927
Greenville, SC 29602-1927

Quantum3 Group LLC as agent for
Comenity Bank
PO Box 788
Kirkland, WA 98083-0788

End of Label Matrix
Mailable recipients 7
Bypassed recipients 0
Total 7